T. L. C. Lines, Inc. *and* District No. 9, International Association of Machinists and Aerospace Workers, AFL-CIO. Cases 14-CA-14935 and 14-RC-9395

December 16, 1982

DECISION, ORDER, AND DIRECTION

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

On July 22, 1982, Administrative Law Judge Lawrence W. Cullen issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, T. L. C. Lines, Inc., Fenton, Missouri, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

DIRECTION

It is hereby directed that the Regional Director for Region 14 shall, pursuant to the Rules and Regulations of the Board and within 10 days from the date of this Decision, open and count the ballots of Janet Amsden, James P. Akers, Julis Renfro, Phil Diller, Steven Seefeldt, and Glen Stockwell, and thereafter issue and serve on the parties a revised tally of ballots, and issue the appropriate certification.

IT IS FURTHER DIRECTED that Case 14-RC-9395 be, and it hereby is, referred to the Regional Director for Region 14 for further proceedings pursuant hereto.

[1] In adopting the Administrative Law Judge's findings that Respondent violated Sec. 8(a)(3) and (1) of the Act by discharging employee Stockwell because of his union activity, we find it unnecessary to rely on the Administrative Law Judge's secondary finding that Stockwell was also discharged because of his concerted activity regarding his objection to the imposition of the new cleanup rule, based on *Alleluia Cushion Co., Inc.*, 221 NLRB 999 (1975).

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
To refrain from the exercise of any or all such activities.

WE WILL NOT interrogate our employees concerning their union activities.

WE WILL NOT threaten employees with discharge or a reduction in job classification or loss of their right to discuss their terms and conditions of employment with our management representatives if they support or select District No. 9, International Association of Machinists and Aerospace Workers, AFL-CIO, as their collective-bargaining representative.

WE WILL NOT discharge our employees or reclassify our employees and implement wage increases or reductions designed to discourage their support for District No. 9, International Association of Machinists and Aerospace Workers, AFL-CIO, or their engagement in concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL reinstate Glen Stockwell to his former position of mechanic or to a substantially equivalent position and WE WILL expunge from his personnel records all references to his discharge.

WE WILL reinstate William Vassalli to his former position of mechanic from the period of his reclassification to mechanic Tech 3 to his voluntary termination in May 1981 and WE

WILL expunge from his personnel records all references to the aforesaid reclassification.

WE WILL make whole the said employees for any loss of pay or other benefits sustained by them by reason of our discrimination against them, with interest upon any moneys due.

Our employees have the right to support and join District No. 9, International Association of Machinists and Aerospace Workers, AFL-CIO, as their collective-bargaining representative or to refrain from doing so.

T. L. C. LINES, INC.

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge: This consolidated case was heard before me on July 29, 30, and 31, 1981, in St. Louis, Missouri, upon a complaint and notice of hearing issued on May 28, 1981, by the Regional Director for Region 14, as amended at the hearing, and arises from an amended charge filed by District No. 9, International Association of Machinists and Aerospace Workers, AFL-CIO (hereinafter referred to as the Union or the Petitioner), alleging that T. L. C. Lines, Inc. (hereinafter referred to as the Respondent or Employer), has violated Section 8(a)(1) and (3) of the National Labor Relations Act (hereinafter referred to as the Act).[1]

The complaint, as amended at the hearing, alleges that the Respondent committed violations of Section 8(a)(1) of the Act in response to the Union's organizational campaign of the Respondent's facilities in Fenton, Missouri, commencing in February 1981, and that in or about April 1981, Respondent reduced the rate of pay of employee William Vassalli and that on or about April 28, 1981, the Respondent discharged its employee Glen Stockwell in separate violations of Section 8(a)(3) and (1) of the Act. The petition for an election in Case 14-RC-9395 was filed by the Union on March 23, 1981. Pursuant to a Stipulation for Certification Upon Consent Election approved by the Regional Director on April 8, 1981, an election was conducted on May 12, 1981, among the employees in the following described appropriate collective-bargaining unit.

> All full-time and regular part-time service department employees employed by the Employer at its Fenton, Missouri, facility excluding office clerical and professional employees, truckdrivers, guards and supervisors as defined in the Act.

There were approximately 15 eligible voters of which 5 cast valid votes for the Union, 4 cast valid votes against the Union, and 6 cast challenged ballots. No objections to the conduct of the election or to conduct affecting the result of the election were filed by either party in the time provided therefor. Five of the ballots were challenged by the Union's observer and one of the ballots was challenged by the Employer's observer. On May 28, 1981,[2] the Regional Director for Region 14 issued his "Report on Challenged Ballots and Order Directing Hearing and Order Consolidating Cases and Notice of Hearing." In his conclusion and order directing hearing, the Regional Director concluded that the challenges to the ballots of James P. (Pat) Akers, Janet Amsden, Philip Diller, Julius Renfro, Steven Seefeldt, and Glen Stockwell raise substantial and material questions of fact which could best be resolved by a hearing. The order further provided for consolidation for purposes of hearing, ruling, and decision by an administrative law judge Case 14-RC-9395 with Case 14-CA-14935.

Upon the entire record in this case including my observation of the demeanor of the witnesses and after due consideration of the briefs filed by counsel for the General Counsel and counsel for the Respondent, I make the following:

FINDINGS OF FACT AND ANALYSIS

I. JURISDICTION

A. *The Business of Respondent*

The complaint alleges, and the Respondent admits in its answer, that Respondent is a corporation with an office and place of business in Fenton, Missouri, and is engaged in the business of transportation of freight and produce in interstate commerce, and that during the 12-month period ending April 1, 1981, which period is representative of its operations during all times material herein, the Respondent, in the course and conduct of its business operations, received gross revenues in excess of $50,000 for the interstate transportation of freight and produce. The complaint alleges, the Respondent admits in its answer, and I find that at all times material herein the Respondent was an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

B. *The Labor Organization*

The complaint alleges, the Respondent admits in its answer, and I find that the Union is now and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

[1] The amended charge in Case 14-CA-14935 was filed on May 26, 1981, the complaint is joined by Respondent's answer filed on June 2, 1981, wherein it denies the commission of violations of the Act. Additionally, consolidated for hearing are the issues raised by the Petitioner's and the Employer's challenges to the ballots of certain employees in the election in Case 14-RC-9395.

[2] All dates are in 1981, unless otherwise stated.

II. THE ALLEGED UNFAIR LABOR PRACTICES[3]

A. *Background*

The Respondent is one of several businesses in which its president, Tom Lange, has an interest. T.L.C. is an abbreviation of Tom Lange Company. The Respondent is engaged in an over-the-road trucking enterprise for the transportation of produce and other goods. The Respondent's facility in Fenton, Missouri, consists of an administrative office and a shop facility for the repair and maintenance of its trucks. The administrative office is staffed by employees engaged in dispatching, settlement, and computer operations and also by clerical employees. Lange has an office in this facility as does James Burt, the Respondent's executive vice president. The administrative area also serves as the administrative offices of T.L.C. Farm Lines, Inc. (hereinafter referred to as Farm Lines), which is an agricultural cooperative association of which Lange is the general manager. Farm Lines was formed by Lange and Gene Akers several years ago. Akers is a consultant to Tom Lange and was serving as a consultant to Farm Lines at the time of the hearing. Akers has an office in the administrative area of the facility. Certain of the employees in the administrative area of the facility in Fenton, Missouri, are employees of Farm Lines, while others are employed by the Respondent. The shop area is staffed solely by employees of the Respondent. Akers was initially in charge of the shop area, although he has never been an employee of the Respondent or had an ownership interest therein. In June 1980, Lange relieved Akers of this responsibility and placed Burt in charge of the shop area. No formal announcement was made to the shop employees of this change. Akers continued until at least October 1980 to assist and advise Lange and Burt in the operation of the shop. The shop is comprised of a repair and maintenance area, a parts area, and an office. The repair and maintenance area is staffed by mechanics and a foreman on each of the three shifts operated by the Respondent. There is also a utilityman assigned to do cleanup work. The parts area is staffed by service employees and a parts foreman. There is an office in the shop which is utilized by the director of maintenance and his secretary who is designated as a shop clerk. The foremen and shop employees report to the director of maintenance who reports to Executive Vice President Burt.

The cost of the operation of the shop and quality of the work done on the trucks had been a matter of concern to Lange since at least June 1980. On February 16, Lange called a meeting of the shop employees to discuss the losses incurred by the shop operation. At the meeting Lange and Burt discussed the need for improvement in the operations of the shop. The employees offered suggestions for the improvement of the shop's operations and expressed their concern for their terms and conditions of employment. Two days after the meeting, the director of maintenance was discharged and mechanic Russell Zoellner[4] was promoted to this position. At approximately this time the day-shift foreman, William Vassalli, was demoted to mechanic.

In approximately late January or February, there was discussion among certain of the shop employees concerning the establishment of a union. A union representative was called by one of the employees and distributed union cards which were signed by certain of the employees. However, there was no credible evidence that the Respondent had any knowledge of the union activities of the employees prior to the February 16 meeting called by Lange. Vassalli initially testified concerning a discussion with Zoellner about the Union at a time when Zoellner was director of maintenance. Although Vassalli placed the date of this conversation in January, Zoellner was not promoted to director of maintenance until after the February 16 meeting. I credit the testimony of former shop secretary Jean Breeden who testified that the conversation occurred in late February.

Subsequently, Burt obtained information from other trucking companies concerning their job classifications and wage structures. He also obtained the job applications of the Respondent's shop employees, and in some cases requested that they fill out new job applications when the Respondent was unable to locate all of the previously existing job applications. Pursuant to this and to a list of demands which was presented by certain of the shop employees for improvement in wages and benefits on March 6, Burt, Lange, and Zoellner determined the placement of the mechanics in various groupings or classifications ranging from mechanic 1 to journeymen mechanics or foreman grade 4 and reclassified the mechanics and set rates of pay for each classification. The Respondent had knowledge of the Union's campaign among its shop employees by late February. Executive Vice President Burt testified that he became aware of the Union's campaign sometime after the February 16 meeting and shortly before (less than a week) the March 6 demands by the shop employees.

Employees Vassalli and Glen Stockwell, a shop mechanic, filled out union authorization cards and mailed them to the Union. Stockwell testified that he received his card on February 27. Subsequently, the Respondent's mechanics met with a union representative on several occasions. These meetings were held outside of the Respondent's premises. The Union presented a demand for recognition to the Respondent's president, Lange, which demand was refused by Lange. The Union filed a petition for an election. The Union issued subpoenas to employees Vassalli and Stockwell to appear at a scheduled representation hearing set for April 7 in Region 14. Both employees appeared at the hearing. Additionally, Foreman Julius Renfro was subpoenaed and appeared. Both Vassalli and Stockwell testified, and I credit their unrebutted testimony, that the Respondent's attorney request-

[3] The following includes a composite of the testimony of the witnesses at the hearing which testimony is credited except as specific credibility resolutions are made.

[4] The compaint alleges, the Respondent admits in its answer, and I find that Lange, Burt, and Zoellner were supervisors of the Respondent within the meaning of Sec. 2(11) of the Act and that Lange and Burt were agents of the Respondent at all times material herein. I also find, based on the credible evidence of his actual and apparent authority and the exercise thereof, that Zoellner was an agent of the Respondent within the meaning of Sec. 2(11) of the Act at all relevant times herein.

ed the name of the individuals who had been subpoenaed to testify. Stockwell testified that the Respondent's attorney wrote their names on a piece of paper. Pursuant to the election agreement between the parties, the representation election was scheduled at the Respondent's facility for May 12.

B. *The Alleged Violations*

1. The alleged interrogation and threats made to Vassalli by Director of Maintenance Zoellner

Vassalli and Breeden testified concerning an incident wherein Director of Maintenance Zoellner called Vassalli into his office and interrogated and threatened Vassalli concerning his union activities. Vassalli placed this conversation in late January or early February and Breeden placed the incident in late February. I find Breeden's placement of the incident as the last week in February to be the more reliable and credit her testimony in this regard as Zoellner was not in the position of director of maintenance until at least February 19. Vassalli testified that Zoellner called him into his office and in the presence of Breeden told Vassalli that "he had a bone to pick with me." And that "if I had anything to do with the Union or bringing it in there or instigating it that I would be fired." Vassalli also testified that Zoellner told him that if the Union came in all the employees would be classified as 6-month apprentices and would lose their seniority. Breeden testified that Zoellner called Vassalli into his office and in her presence asked what he (Vassalli) "was trying to prove with all the union talk" and told Vassalli that he was the main instigator of the Union. Breeden testified that Vassalli told Zoellner that he was misinformed and that Zoellner told Vassalli that "there is no way management is going to let the Union in here" and further that "they would take whatever measure they deemed necessary to prevent it even if it meant firing all of them." Breeden also testified concerning another incident wherein Zoellner told Vassalli that the mechanics "would all be reclassified as apprentices" and they would receive no vacations or sick leave and that some of them would earn less money as a result of the Union. She placed this incident approximately the same week as the other incident.

Zoellner denied that a meeting took place in the presence of Vassalli and Breeden and testified that he discussed generally with other employees, while he was a rank-and-file mechanic as well as later, the benefits, advantages, disadvantages, of unionization as he had been a member of a union in the past and that he had shown other employees a union contract. Zoellner denied interrogating or threatening Vassalli.

I credit the testimony of Vassalli and Breeden concerning the interrogation and threats of Vassalli by Zoellner concerning Vassalli's engagement in union activities. I found that their testimony was mutually corroborative with some minor differences which I do not find detrimental to their credibility. I found Breeden's testimony concerning the placement of the dates of these conversations reliable. I do not credit Zoellner's general lack of recall or denial of these conversations. Accordingly, I find that the Respondent violated Section 8(a)(1) of the Act by reason of the interrogation of Vassalli and threats issued to Vassalli by its director of maintenance, Zoellner, on or about the last week of February 1981. See *Dillingham Marine and Manufacturing Co., Fabri-Value Division*, 239 NLRB 904, 905 (1978), enfd. 610 F.2d 319 (5th Cir. 1980); *Bobs Motors, Incorporated*, 241 NLRB 1236, 1241 (1979); and *Firmat Manufacturing Corp.*, 255 NLRB 1213 (1981).

2. The alleged creation of the impression among the Respondent's employees that their union activities were under surveillance

This allegation concerns an incident which occurred sometime in late March when Vassalli went into the office occupied by Gene Akers at a time when Akers and his son, Pat Akers, were talking. Vassalli asked to talk to Gene Akers. Vassalli then complained to Gene Akers concerning the threats issued by Zoellner to discharge Vassalli as a result of his union involvement. Vassalli testified that Gene Akers then stated that he and Burt were upset to learn that Vassalli would have anything to do with the Union. Vassalli further testified that during this conversation Akers asked Vassalli whether he wanted to withdraw his authorization card. Vassalli also testified that he indicated that he did not favor the Union himself but that if Zoellner's conduct continued along these lines he would "go along with the Union." Gene Akers testified that he did not recall whether he had made these comments but did acknowledge the possibility that he may have done so. I credit Vassalli's testimony regarding the comments made by Akers.

In view of the sharing of the administrative offices by the Respondent and Farm Lines, of which Akers was a consultant, Akers' maintenance of an office in these administrative offices, his prior responsibility for the operations of the Respondent's shop, and the lack of any evidence of a formal announcement to the shop employees that Akers no longer had authority with respect to the shop, I find that the Respondent placed Akers in a position of apparent authority wherein he would reasonably be perceived as a member of the Respondent's management. Moreover his statement to Vassalli clearly reflected the Respondent's union animus as discussed elsewhere in this Decision. I, accordingly, find that Akers was an agent of the Respondent within the meaning of Section 2(11) of the Act when he told Vassalli that he and Burt were upset to learn that Vassalli was involved with the Union. See *Rapid Manufacturing Company*, 239 NLRB 465 (1978), modified 612 F.2d 144 (3d Cir. 1979), and *Local 300, Cosmetic and Novelties Workers' Union, affiliated with International Production Service and Sales Employees Union (Cosmetic Components Corp.)*, 257 NLRB 1335 (1981). However, the conversation was initiated by Vassalli and followed his submission on March 6 of a list of demands by the shop employees to Akers for Lange's consideration. That document referred to the Union. Moreover, there was unrebutted testimony by Lange concerning Vassalli's intent to revoke his union card as well as evidence that Burt, as well as Zoellner, was aware of the Union's campaign prior to this time. Under these circumstances, I find the evidence is insufficient to

prove that Akers' statement to Vassalli that he (Akers) and Burt were upset to learn that Vassalli would have anything to do with the Union unlawfully conveyed to Vassalli the impression that the union activities of the Respondent's employees were under surveillance. Rather, I find that Vassalli's engagement in union activities was known to the Respondent and that Akers was responding to Vassalli's complaint concerning Zoellner's statement. Accordingly, I find that the Respondent did not violate the Act by creating the impression that the union activities of its employees were under surveillance. See *DRW Corporation d/b/a Brothers Three Cabinets*, 248 NLRB 828, 840 (1980), and *South Shore Hospital*, 229 NLRB 363 (1977).

3. President Lange's speech to the Respondent's employees on April 10

Stockwell testified that Lange called a meeting of the first- and second-shift shop employees and discussed the advantages and disadvantages of union representation and specifically told the employees that if they voted for union representation they would no longer be able to discuss pay raises with him. Lange testified concerning this meeting that he followed a text prepared by the Employer's attorney (Resp. Exh. 5), although he acknowledge that he had not read verbatim from the text. Lange denied that he had told the employees that he would refuse to discuss pay raises or any other problems, but testified that he would be obligated to discuss these items with the Union in the event the employees chose union representation. Lange also testified that the principle subject of discussion at this meeting was poor workmanship performed by shop mechanics on the trucks.

Although Lange acknowledged telling the employees at the April 10 meeting that, if the Union were selected to represent them, it would be necessary for him to negotiate with the Union and this would result in loss of freedom of action on the employees' part, he denied having refused to discuss any items with the employees or with the Union: Lange testified on cross-examination that his principle concern with a union representing his employees was that there would be a barrier between himself and the employees and that he would be required to negotiate with someone else whereas he preferred to negotiate with the employees on an individual basis.

I credit the testimony of Stockwell concerning Lange's statement to the employees at the April 10 meeting that he would no longer be able to discuss pay raises with them if the Union were selected as their bargaining representative. I found Stockwell's recollection of this incident to be specific. Moreover, in assessing credibility, I note that the message of portions of the document utilized by Lange in this meeting was that a loss of freedom would occur if the Union were selected as the employees' bargaining representative. I also note that Lange acknowledged he did not read the document verbatim and that Lange's principle stated opposition to the Union expressed in this hearing was his preference to deal directly with the Respondent's employees rather than through a third party. Accordingly, I find that the Respondent violated Section 8(a)(1) of the Act by Lange's threat to the employees that he would no longer discuss pay raises with them if the Union were selected as their collective-bargaining representative. A statement by an employer to employees that the employer will no longer be able to discuss their terms and conditions of employment with them if they select a union as their collective-bargaining representative is a threat that the employees will lose this benefit if they choose union representation and is violative of Section 8(a)(1) of the Act even if such statement is based on the mistaken belief of the employer concerning the effect of union representation. See *Tipton Electric Company*, 242 NLRB 202 (1979), enfd. 621 F.2d 690 (8th Cir. 1980); *Limestone Apparel Corp.*, 255 NLRB 722 (1981).

4. The reevaluation and reclassification of the mechanics an the adjustments of their rates of pay

Lange testified that the purpose of the February 16 meeting was to improve the operations of the shop to alleviate losses incurred by the failure of the Respondent's trucks as they "were not holding up on the road." Lange testified that at this meeting the employees told him "that they did not know what they were doing, not only at work but where they were going with their jobs and their careers and such." Lange testified further, "So we wanted to get the shop in shape, so that this guy made the same amount as that guy that did the same type of work and that sort of thing." Lange testified that the Respondent contacted other shops and reviewed information concerning how their employees were classified and paid and that a decision was made to "fashion a program after that and we started working on the program that would advise the people in the shop . . . how we were paying the shop people and what we expected them to do." Similarly, Burt testified, "We didn't have the organization in the shop insofar as what a guy should be paid for doing this . . . and I felt like we needed a more precise way of determining what a guy should make."

Lange and Burt testified that other shops with similar operations were contacted and Burt received information concerning their job classification systems and rates of pay. The job applications of the Respondent's shop mechanics were reviewed and in several instances the mechanics were asked to prepare new job applications when their original applications could not be located. On March 6 Vassalli brought a memorandum to Akers from the shop employees (Resp. Exh. 1) which contained a list of requests or demands for improvements and changes in wages and benefits and other terms and conditions of employment. The memorandum was addressed to Lange and commenced with the statement, "The shop employees feel that we can set together and come to some kind of agreement without resorting to a union vote." Akers testified that he put the memorandum on Lange's desk and told Lange it was from the shop employees but did not identify Vassalli or otherwise name any individual. Lange testified that he received the memorandum and was told by Akers that it was from the shop employees. Burt testified that he had heard from others approximately a week prior to the March 6 memorandum that union cards had been signed by the employees. Lange was unable to place the time when he initially learned of the

union campaign. Lange testified that a week to a week and a half after he received the March 6 demands he met with the employees and told them that the Respondent would have a definite policy subject the following Friday. Subsequently, the Respondent issued a document entitled "Shop Personnel Manual Wages and Salary Administration," which contained job descriptions for the mechanics in its shop facility, ranking them as tech 1—apprentice mechanic or helper, tech 2—mechanic helper, tech 3—mechanic, and tech 4—journeyman mechanic. The manual also provided for performance and wage reviews; set out vacation, holiday, and overtime policies; and set out rates of pay with a high and low range for each of the four tech grade mechanic positions. Burt testified that he commenced drafting the manual less than a week after the February 16 meeting. The new pay rates were effective April 1 and the placement of the employees into the job classifications was made by Burt who reviewed each employee's classification with him. All of the mechanics received pay raises with the exception of Politte whose rate was unchanged and Vassalli who was placed as a tech 3 mechanic, rather than a journeyman mechanic and received a 75-cent-an-hour reduction in his wage rate. The pay raises of the employees ranged from 25 cents to $1.50 an hour. The Respondent contends that Vassalli received a reduction in pay as a result of his previous demotion from foreman to mechanic in February and as a result of a review of his qualifications and dissatisfaction with the quality of his work and that he did not fit a journeyman mechanic classification. In support of its position, Respondent's director of maintenance, Zoellner, testified concerning a job which he observed Vassalli perform while Zoellner was a mechanic. Vassalli testified without rebuttal that Zoellner had also worked on this transmission. Vassalli also testified that he was not told by Executive Vice President Burt at the time he was placed in a tech 3—mechanic position that his pay was reduced as a result of problems associated with his work performance. Burt also acknowledged that Vassalli had not been apprised by him of any dissatisfaction with his work performance.

The General Counsel contends that the timing of the reevaluation of the employees, the implementation of pay raises, and the magnitude of the pay raises support a finding that they were designed by the Respondent to discourage support for the Union and were thus violative of Section 8(a)(1) of the Act. The Respondent contends that the reevaluation and pay raises were legitimate responses to concerns expressed by the employees at the February meeting prior to the advent of the Union's campaign and were part of management's efforts to improve the quality of work and profitability of the shop. The timing of the reevaluation and pay raises was coextensive with the employees' expressed concerns at the February meeting and their March 6 demands presented to the Respondent. The March 6 letter from the shop employees specifically refers to the possibility of reaching agreement (concerning wages and job classifications as well as other matters) without the necessity of "resorting to a union vote." I find that the evidence supports an inference that the reevaluation and pay raises were motivated in part by the Respondent's efforts to discourage the union campaign. The magnitude of the pay raises gives rise to an inference that the raises were designed to discourage the employees' support for the Union. Several of the employees received raises in excess of 20 percent of their preexisting hourly rate. There is also evidence of union animus in this case and there were independent violations of the Act. Under these circumstances, I conclude and find that reevaluation of the employees and the implementation of wage increases were principally designed to discourage the employees' support for the Union and that the Respondent thereby violated Section 8(a)(1) of the Act. See *Tekform Products Company, a Division of Bliss & Laughlin Industries*, 229 NLRB 733 (1977); *Gordonsville Industries, Inc.*, 252 NLRB 563 (1980).

I also find that the General Counsel has proven a *prima facie* case of a violation of Section 8(a)(3) of the Act by the Respondent through the placement of Vassalli in a mechanic tech 3 position and the reduction in his rate of pay. Vassalli was identified by the Respondent as a union adherent and threatened by the Respondent's director of maintenance, Zoellner, with loss of his job if he supported the Union. Although Vassalli had been previously demoted from the position of day foreman to mechanic in February, he incurred no loss of pay at that time. The tech 4 position was essentially a journeyman position and I find that Vassalli would have qualified for this position as in the case of Politte. The evidence presented by the Respondent through the testimony of Zoellner and Burt concerning Vassalli's alleged unsatisfactory job performance was unconvincing and I do not credit it. I find that the Respondent has failed to rebut the *prima facie* case of a violation of the Act by the preponderance of the evidence. Accordingly, I find that the Respondent violated Section 8(a)(3) and (1) of the Act by the reevaluation and placement of Vassalli in a tech 3 position and by its reduction of his rate of pay. See *Walker Electric Co., Inc.*, 219 NLRB 481 (1975), and *Crown Cork & Seal Company, Inc.*, 255 NLRB 14 (1981).

5. The cleanup policy

It is undisputed that prior to April 21 the Respondent had no written cleanup policy. Vassalli and Stockwell both testified that the mechanics were allowed to put away their tools and clean up shortly prior to the end of their shifts (10 or 15 minutes). On April 21 Director of Maintenance Zoellner called a meeting of the first-and second-shift mechanics and announced that it would be necessary for them to work to the end of the shift rather than to cease work prior to the end of the shift to clean up and put away their tools. According to Zoellner his reason for this announcement was that he had observed a problem with employees not working to the end of the shift and that he called the meeting to explain to the employees that they should not quit work 20 minutes prior to the end of the shift. Zoellner contended that the early quitting caused the trucks to lose this maintenance time which was charged to them. He also contended that the policy had been enforced by other foremen (including Vassalli) in the past. Vassalli testified that Zoellner told the employees at the meeting that "if we wanted to act

like a union shop we would wash our hands after we clocked out and clean up our area and tools after we clocked out." Burt testified that he walked in on the meeting and asked Zoellner what the meeting concerned, and upon being apprised by Zoellner of the purpose of the meeting, he (Burt) told Zoellner to put it in writing as he had always assumed that the employees were working until the end of the shift. Zoellner testified that he had previously put the policy in writing as he had reviewed it with the foremen prior to his meeting with the employees on April 21 and that he then posted the policy.

I credit the testimony of Stockwell and Vassalli that the Respondent had in the past allowed employees to clean up prior to the end of their shift. I also credit Vassalli's testimony concerning Zoellner's statement to the employees that if they wanted to act like a union shop they would be required to clock out prior to putting their tools away and cleaning up. Although I recognize that Stockwell did not testify concerning this statement, I found Vassalli to be a credible witness who testified in a forthright manner. Vassalli's testimony in this regard was not specifically rebutted by Zoellner. Moreover, Zoellner's testimony concerning his observation of a problem with certain employees cleaning up prior to the end of the shift was vague and at least to some extent inconsistent with his testimony that the Respondent's practice had previously been to work to the end of the shift, particularly with respect to his testimony that a few employees had cleaned up 20 minutes prior to the end of the shift and that this had occurred "since I'd been there."

Under these circumstances, I find that Zoellner did institute a change in the existing practice of allowing employees to clean up and put away their tools prior to the end of the shift. I find that Zoellner's stated purpose for doing this (to operate like a union shop) was intended to discourage the employees' support for the Union. Accordingly, I find that the Respondent violated Section 8(a)(3) and (1) of the Act by imposing more onerous working conditions on the employees in order to discourage their support for the Union. See *Woonsocket Health Centre*, 245 NLRB 652 (1979).

6. The alleged interrogation of an employee by Executive Vice President Burt in late April

It was stipulated by the parties at the hearing that, as Burt was walking through the shop, he observed a group of the shop employees sitting around a table at their break period and asked: "What's going on with this Union deal?" Additionally Vassalli testified that in April while he was on an evening meal break with employees Warren Glick, Bob Harrison, and Phil Diller, Burt asked whether the employees were going to have a union and that he (Vassalli) answered, "We will have to wait and see. Jim (Burt), it is close to election." Harrison testified that Burt inquired at this time, "How are you going to vote?" Burt admitted only that he had made the statement as stipulated by the parties. He testified that he recalled that Vassalli responded to his question but that he (Burt) did not recall any of the other employees at the table at that time.

It is undisputed that Burt inquired of the employees concerning the Union. Although the parties stipulated that on one occasion Burt asked, "What's going on with this Union deal?" both Harrison and Vassalli testified that he inquired concerning the outcome of the election. While I recognize the verbal differences in the statements attributed to Burt by Vassalli (whether there was going to be a union) and Harrision (how the employees were going to vote) I find their testimony mutually corroborative in that Burt was inquiring concerning their union activities. Even the seemingly innocuous question stipulated to by the parties, "What's going on with the Union deal?" when viewed in the context of the upcoming election and independent violations of the Act in this case, and the Respondent's demonstrated union animus takes on the character of interrogation rather than that of casual conversation. Under these circumstances I find that Burt's statement, as stipulated by the parties, constituted interrogation concerning their union activities and the union activities of their fellow employees and that the Respondent thereby violated Section 8(a)(1) of the Act. See *Mark I Tune-Up Centers, Inc.*, 256 NLRB 898 (1981).

7. The discharge of employee Glen Stockwell

On April 28 the Respondent discharged mechanic Glen Stockwell. Stockwell had signed a union card in February, attended union meetings, and had been called as a witness by the Union for a preelection hearing on April 7 at which time his name was taken by the Respondent's attorney. The Respondent's president, Lange, testified that Stockwell told him that he had signed a union card. He also testified that Stockwell was one of a group of three employees who discussed improvements sought by the shop employees. I find that the Respondent's knowledge of Stockwell's activities on behalf of the Union has been demonstrated.

Stockwell was initially employed as a truck mechanic by the Respondent in December 1979 and worked for the Respondent until his discharge on April 28, 1981, a period of approximately 16 months. During this period, he received no disciplinary action concerning his work or warnings concerning his work performance until April 10 when Lange spoke to the employees and discussed the quality of workmanship on the trucks and cited an instance in which a truck transmission had failed and another in which a "pitman arm" (which controls the steering) on a truck had become loose, Stockwell testified that following Lange's speech to the employees on April 10, he asked Lange whether there was a problem with his work and Lange told him that "they [the Respondent] were having a little but it was nothing serious." Stockwell testified that on April 16 or 17 "Lange came up to me and told me that I had been doing a pretty good job, and I ought to keep doing the work that I was doing. He had felt that I had attitude problems for a while, but he had felt it was taken care of." Stockwell testified concerning Director of Maintenance Zoellner's imposition of a change in the cleanup policy on April 21 as discussed, *supra*, and that Zoellner had also discussed the poor quality of the work being per-

formed in the shop at that time. Stockwell went on vacation after April 21 and returned on April 27. On April 28 Stockwell was called by Zoellner into his office when he reported for work. Stockwell testified that Zoellner told him that he had discussed his discharge with Lange and Burt and that they had decided to discharge him. When Stockwell inquired as to the reason for the discharge, Zoellner told him he had "been putting out poor work, that my work had gone down the last couple months." Zoellner cited as examples a brake job which Stockwell had performed 2-1/2 months prior thereto which Zoellner told Stockwell had "came apart off the road." At that time Stockwell told Zoellner he did not believe that if the brake job had been performed improperly it would have lasted 2-1/2 months. Stockwell acknowledged that he had probably performed the job in question. Zoellner also informed Stockwell concerning a "pitman arm" which had become loose and fallen off while the truck was being driven down the road. Stockwell contended that he had initially been assigned to change tires on the truck and was asked by the driver if the pitman arm had been changed. Stockwell replied he did not know as mechanic Jim Seevers had been working on the truck that day. Stockwell inspected the pitman arm, noted its lack of security, and commenced working on it. Stockwell told Zoellner he believed there was no basis for his discharge, that he would seek legal counsel or help from the Union in retaining his job, and left.

On cross-examination, Stockwell acknowledged that on April 27 he had clocked out 5 minutes early at the end of the shift to clean his tools and that Zoellner told him he would be docked a half hour's pay and that if he (Stockwell) did it again he would receive a 3-day layoff and that he (Stockwell) told Zoellner he would see a lawyer concerning this. Stockwell's pay was not actually docked but he was discharged the next morning.

Lange, Burt, and Zoellner were called as witnesses on behalf of the Respondent and testified concerning the discharge of Stockwell.

Zoellner testified concerning incidents which came to his attention regarding Stockwell's work performance. One incident involved a brake job which had been performed on one of the Respondent's trucks by Stockwell in January. On April 20 Zoellner received a telephone call from one of the Respondent's drivers who informed Zoellner that the left rear wheel assembly had become detached from the truck on which Stockwell had performed the brake job, as the truck was traveling down a two-lane road and had traveled across the other lane and into a field. Zoellner contacted a nearby service shop and asked them to send a wrecker and to repair the truck. Zoellner received a telephone call from the service manager who informed him that the outer jam (lock) nut had been progressively worked off from the wheel assembly. Zoellner checked the previous work orders and determined that Stockwell had worked on the truck 3 months prior thereto. Zoellner examined the parts in question which were returned by the truckdriver and determined that the jam (lock) nut "wasn't torgued down tight enough and over a period of time it just slowly backed off." Zoellner noted in his examination that the threads on the outer jam (lock) nut were "just smooth like the nut had backed off and it just constantly kept running around and around the shaft until the threads were gone. The nut backed off." Zoellner also related an incident involving the pitman arm on a truck which controls the steering wherein Stockwell had worked on the truck and had failed to replace a spacer bar and the driver complained that the truck was not steering properly and it was discovered that the spacer bar had not been replaced.

Zoellner also testified that on March 30 Stockwell performed work on the pitman arm on an International Truck. The Respondent's driver, Hershel Wheelis, had brought the truck in to have the steering checked. Zoellner testified that Foreman Julius Renfro had assigned Stockwell to check the steering and reported to Renfro that "it was okay." Renfro informed Zoellner, who informed Wheelis, who disagreed and told Zoellner to drive it. Zoellner drove it a short distance and determined that it was not steering properly. When Zoellner returned he was met by Wheelis and dispatcher Rick Sellers. Sellers reached underneath the truck, grabbed the pitman arm, and determined it was loose. Zoellner then told Stockwell to change the pitman arm. Stockwell did so (Resp. Exh. 17) and the driver left with the truck. The timesheet for this job was dated March 30 which was a Monday and a nonworkday for Renfro. Zoellner testified he did not recall the exact date of the inspection by Stockwell. In mid April the driver of this truck was stopped at a port of entry for an inspection and it was determined that the pitman arm was loose again. The truck was repaired at the inspection site.

Stockwell went on vacation on April 21 and returned on April 27. On April 27 Zoellner observed that Stockwell quit work early prior to lunch and prior to the end of the shift in order to clean up. He confronted Stockwell with this and told Stockwell he would dock him and Stockwell became upset and left. After this incident Zoellner went to talk to Burt concerning the incidents involving Stockwell's work performance on the Respondent's trucks. Zoellner acknowledged that he also discussed the cleanup incident as well as Stockwell's overall work performance. Zoellner expressed his concern to Burt that "This guy is just going to get somebody hurt."

Burt testified that he had previously heard complaints concerning Stockwell's work performance and was not certain whether these complaints were the result of "a personal thing between Russ [Zoellner] and Glen [Stockwell]." Burt testified further:

> I thought the pitman arm thing was extremely serious and we don't like to have that type of problem. The driver doesn't, and the wheel problem that was mentioned to me, the rear tandems on the tractor were flying across the interstate, that is a pretty serious problem.
>
> It was really if it was any number of other things its different, but when you are talking about the safety of the people that we ask to drive these trucks

> across the country and the people they pass up and down on the highway, that's pretty serious stuff.

Lange testified that he had heard remarks about Stockwell's work performance, that his own impression was that Stockwell "tried hard" but that the general impression among the foremen and Zoellner was that Stockwell did not follow instructions properly, failed to ask questions when necessary but instead "would flounder through and try to get it done," with resultant inadequate work. Lange testified that at the meeting of April 10 he said there were several employees "who are not doing the kind of job I want and they are going to be fired if they do not do it properly." After the meeting Stockwell asked if he were one of the several employees to which Lange had referred and Lange told him yes "but you just do the best you can." Lange testified that at that time he told Stockwell that he should ask for help if he was involved in a job when "you do not know what you are doing." Lange testified that on April 27 he walked into Burt's office while Burt and Zoellner were discussing the problem with the "pitman arm" and that a wheel had fallen off and that Stockwell had quit 20 minutes early to clean up. Lange testified that he then said:

> Oh, go ahead and do what you have to do, which was to relieve him of his duties, fire him or whatever. This was their recommendation. I agreed with it. The next morning Russ [Zoellner] did it.

Lange denied that Stockwell's union activities had any part in his decision. Lange also acknowledged that he had told Stockwell his job performance had improved after the April meeting upon receiving a favorable report when he inquired of Zoellner. Stockwell, among other employees, had been granted a wage increase at the time of the reclassifications and wage adjustments. Zoellner acknowledged having recommended Stockwell for a raise sometime in March at the time of the overall evaluations and testified, "Indeed everybody was due for a raise, just to bring them in line, you know, what today they are paying." Zoellner testified that Stockwell was due for a raise and that at the time of his (Zoellner's) recommendation, Stockwell was "holding his own."

The General Counsel recalled Vassalli as a rebuttal witness. Vassalli testified that he had not observed any problems concerning Stockwell's work but that Stockwell was "a limited mechanic." Vassalli also testified concerning the brake job performed by Stockwell that if a nut were not properly torgued down, "it would back off right away." He testified further that a truck travels an average of 15,000 miles a month or 45,000 miles in a 3-month period. He also related another incident when an axle nut had broken since it had not been properly put on, although he acknowledged he had not inspected the wheel involved.

Under the above circumstances, I find that the General Counsel has made a *prima facie* case of a violation of Section 8(a)(3) and (1) of the Act by the Respondent's discharge of employee Glen Stockwell as a result of his engagement in concerted activities protected by Section 7 of the Act. Stockwell was a known union adherent, the Respondent's union animus was demonstrated, and there were independent violations of the Act. Stockwell's discharge on April 28 occurred less than a month after he was granted a pay raise on April 1 and given an encouraging comment by Lange concerning his work performance. There was no evidence of any previous disciplinary action taken by the Respondent against Stockwell with the exception of the comment made by Lange to Stockwell following the April 10 meeting. Stockwell's disagreement with Zoellner concerning his failure to follow Zoellner's new cleanup policy occurred immediately prior to Zoellner's recommendation to Burt and Lange that Stockwell be discharged. Stockwell's discharge occurred shortly prior to the scheduled representation election. The above circumstances give rise to an inference and a finding that Stockwell's concerted activity was a motivating factor in the Respondent's decision to discharge him.

The Respondent contends that Stockwell was discharged as a result of the Respondent's dissatisfaction with his overall work performance and particularly in view of two specific instances involving the brake job performed by Stockwell in January and the pitman arm repair performed by Stockwell on March 30. At the outset each of the two particular instances cited by the Respondent (the detachment of the wheel from the truck and the loose pitman arm which controls the steering) involved obvious serious safety hazards. However, the lapse of time between the work performed by Stockwell and the failure of the item in question (2-1/2 months in the case of the brake repair performed in January and 2 weeks in the case of the pitman arm repair) make the cause of the failures of these items a matter of speculation, particularly in view of the mileage traveled by these trucks (15,000 miles a month according to the rebuttal testimony of Vassalli). I did not find Zoellner's testimony as to the reason for the "jam nuts" having backed off to be the only plausible one in view of the substantial distances and time lapse involved. Additionally, Vassalli testified that there could be other reasons for this occurrence and that normally the failure would occur within a relatively short distance (100 hundred miles) as opposed to thousands of miles. Moreover, although the Respondent contended that Stockwell's performance had not been adequate in the past, there was no evidence that he had been counseled, warned, or disciplined in the past with the exception of Lange's comment to Stockwell, 3 days after Stockwell had appeared to testify on behalf of the Union at a representational hearing. Nor was there any evidence that any other mechanics had been disciplined for inadequate work performance by the Respondent in the past, including the incident testified to by Vassalli wherein a wheel fell off a truck less than 100 miles from the Respondent's facility after work was performed by mechanics on the night shift. Thus the Respondent's discharge of Stockwell is the first documented instance of discipline of a mechanic for poor work performance by the Respondent, although the Respondent had admittedly been concerned about inadequate work performance and the failure of its trucks on the road in the past. Moreover, in assessing the credibility of Zoellner with respect to his reasons for recom-

mending the discharge of Stockwell, I have considered his union animus as expressed by him to Vassalli on behalf of the Respondent and his disagreement with Stockwell concerning Stockwell's leaving work early to clean up in contravention of the implementation of a change in the cleanup policy. I also consider that Stockwell was not given an opportunity to be apprised of his alleged failure to perform work properly and to respond to questions or concerns about his workmanship prior to his discharge. Under these circumstances, I find that the Respondent seized upon a pretext to rid itself of a known union adherent by the assignment of vague complaints concerning Stockwell's workmanship and only two specific instances of alleged poor workmanship each of which are subject to speculation as to the reason for the failure of the items in question given the lapse of time between the repairs and the lack of objective evidence linking the cause of the failure with the alleged inadequate work performance by Stockwell.

I find that Stockwell's disagreement with Zoellner concerning Zoellner's imposition of the cleanup policy and threat to dock Stockwell on April 27 and Stockwell's threat to contact a lawyer concerning the matter was the factor which triggered Zoellner's meeting with Burt and Lange and that Stockwell's known union sentiments and activities and his complaint and threat to contact a lawyer concerning the imposition of a change in working conditions were the true reasons for his discharge. Employee complaints regarding matters of "mutual aid or protection" such as was involved here in Stockwell's complaint concerning the implementation of the cleanup policy are protected concerted activities under Section 7 of the Act. See *Alleluia Cushion Co., Inc.*, 221 NLRB 999 (1975). I find that the reasons assigned for the discharge of Stockwell by the Respondent are pretextual and that the Respondent has failed to rebut the *prima facie* case established by the General Counsel. Accordingly, I find that the Respondent violated Section 8(a)(3) and (1) of the Act by its discharge of employee Glen Stockwell. See *Limestone Apparel Corporation, supra*, and *Wright Line, a Division of Wright Line Incorporated*, 251 NLRB 1083 (1980).

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The unfair labor practices of the Respondent as found in section II, above, in connection with the Respondent's operations as found in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead labor to disputes burdening and obstructing the free flow of commerce.

IV. THE CHALLENGED BALLOTS

The stipulated appropriate unit is:

> All full-time and regular part-time service department employees employed by the Employer at its Fenton, Missouri, facility, excluding office clerical and professional employees, truck-drivers, guards and supervisors as defined in the Act.

The challenged ballots of Janet Amsden, James P. (Pat) Akers, Julius Renfro, Phil Diller, Steven Seefeldt, and Glen Stockwell are sufficient in number to affect the result of the election held May 12, 1981.[5]

The Ballot of Glen Stockwell

As I have found that Stockwell was discriminatorily discharged in violation of Section 8(a)(3) and (1) of the Act, I find that he was eligible to vote in the election on May 12, 1981. Accordingly, I shall recommend the Employer's challenge to his ballot be overruled. See *Gossen Company, a Division of the United States Gypsum Company*, 254 NLRB 339 (1981); *PRS Limited, d/b/a F. & M. Importing Co.*, 237 NLRB 628, 632 (1978); and *Firmat Manufacturing Corp.*, 255 NLRB 1213 (1981).

The Ballot of Janet Amsden

The Petitioner has challenged the ballot of shop clerk Janet Amsden on the ground that she is a confidential office clerical employee. The Employer contends that she is a plant clerical employee with a community of interest with other employees in the unit and that she is not a confidential employee. Amsden testified that at the time of the election she worked in an office in the shop and reported to Director of Maintenance Zoellner, whereas other clerical employees worked in the Employer's general office area. She is an hourly paid employee, punches the same timeclock as the shop mechanics and receives time and a half for overtime, whereas the clericals in the general office area are salaried and do not receive overtime pay. She receives the same 30-minute lunch period as the mechanics, whereas the other office employees receive an hour for lunch. She receives the same break time as the mechanics, whereas the other clericals do not receive breaks. She receives a set number of 3 sick leave days as do the mechanics whereas the office clericals do not have a set number of days. Her duties include the preparation of timecards; the processing of purchase orders and reconciliation of purchase orders with vendor invoices; the calculation of time spent by the mechanics on jobs performed in the shop; and the typing of fuel mileage reports. She types up checks for payment in accordance with vendor invoices for parts. She answers the telephone, does typing of fuel mileage reports, and occasionally types memorandums and letters for the director of maintenance. She maintains a record of the shop employees sick leave allowances and usage. She did not type correspondence relating to labor relations policy concerning rates of pay or discipline except on one occasion when she typed a document concerning errors of work performed concerning Stockwell. She had not typed internal memorandums or policy statements, employee performance reports or reports on production standards or investigative reports.

Under the above circumstances and in the absence of any evidence that Janet Amsden has any community of

[5] The tally of ballots showed that of 15 eligible voters, 5 cast valid votes for and 4 cast valid votes against the Union and that the Employer challenged the ballot of Glen Stockwell and the Union challenged the ballots of Janet Amsden, Julius Renfro, Phil Diller, Steven Seefeldt, and James P. (Pat) Akers.

interest with the office clerical employees, I find that Janet Amsden has a substantial community of interest in her terms and conditions of employment with the shop employees. See *Texprint, Incorporated*, 253 NLRB 1101 (1981), and *Jensen's Motorcycle, Inc. d/b/a Honda of San Diego*, 254 NLRB 1248 (1981). I also find that there is no evidence that she assists or acts in a confidential capacity to a person who formulates, determines, and effectuates management policies in labor relations. The record did not establish that Director of Maintenance Zoellner possessed independent authority to formulate, determine, and effectuate management policies in labor relations. Rather, the record established that Zoellner did not have independent authority to hire or discharge employees, discipline, promote, set wage rates, or otherwise set management personnel policies. Assuming, *arguendo*, that Zoellner did formulate, determine, and effectuate management labor relations policies there was no evidence that Amsden assisted or acted in a confidential capacity to Zoellner at the time of the election, with the single exception wherein she typed a document concerning errors on work performed by Stockwell. Accordingly, I find that Amsden was a plant clerical employee at the time of the election and recommend that the challenge to her ballot be overruled. See *The B. F. Goodrich Company*, 115 NLRB 722 (1956); *John Sexton & Co., Division of Beatrice Foods Co.*, (1976), and *Greyhound Lines, Inc.*, 257 NLRB 479 (1981).

The Ballot of James P. (Pat) Akers

The Petitioner has challenged the ballot of James P. (Pat) Akers, a part-time employee in the Employer's parts department at the time of the election on the ground that he is a relative of the management of the Employer, his father Gene Akers. James Akers was no longer employed by the Employer at the time of the hearing. His pretrial affidavit was admitted into evidence by stipulation of the parties. At the time of the election Gene Akers was neither a shareholder nor an officer of the Employer although he formerly operated in a managerial capacity with authority over the shop employees until June 1980 when he ceased to have such authority. He maintains an office in the same facility with the Employer in connection with his responsibilities with Farm Lines. Although he formerly served as a consultant to President Lange concerning the Employer's operation, he had not served in that capacity since at least January 1981. Thus, James Akers is not excluded from the unit by the operation of Section 2(3) of the Act as he is not an "individual employed by his parent or spouse." Additionally, the evidence established that he was accorded similar terms and conditions of employment as other employees, was required to punch a timeclock, and had his pay docked for reporting late. Accordingly, I find that James P. (Pat) Akers was eligible to vote in the May 12, 1981, election and shall recommend the challenge to his ballot be overruled. See *Weyerhaeuser Company, Soft Disposable Division*, 211 NLRB 1012 (1974), and *Jensen's Motorcycles, Incorporated, supra.*

The Ballots of Foremen Julius Renfro and Phil Diller

The Petitioner has also challenged the ballots of Foremen Julius Renfro and Phil Diller on the ground that they are supervisory employees. Although Renfro was classified as foreman at the time of the election, he was classified as a mechanic at the time of the hearing. The evidence established that at the time of the election Renfro was serving as a foreman on the day shift and Diller served as a foreman on the night shift. Both employees were working foremen and spent 50 to 75 percent of their time performing mechanical work on the Employer's trucks.

Diller testified that he has no authority to hire or fire employees, has never suspended or laid off an employee nor given employees written reprimands or warnings, but has orally reprimanded or warned employees by taking "complaints from the Director of Maintenance and passed them on." Diller has never refused anyone the right to leave work who became ill. Diller recommended one employee for a raise but was not aware whether the recommendation was followed. Diller receives work assignments from the director of maintenance or other foremen and assigns the work to employees based on his assessment of who can do the job. Diller has no office or desk but utilizes a service desk utilized by other foremen and maintenance employees. He assigns overtime by holding the shift over to finish a job when necessary to do so. He initials timecards for overtime or if an employee forgets to punch in or out. Diller, himself, punches a timecard as do the mechanics. Diller takes repair orders and assigns jobs on a predetermined priority basis. He attends meetings with the director of maintenance and other foremen. He has discussed problems with individual mechanics concerning their job performance or failure to return from a break or lunch. He had discussed the work performance of several employees with the director of maintenance.

Renfro was employed as a foreman during February through April and was a foreman at the time of the election. He returned to his position as a mechanic and ceased to be a foreman after the election. The following concerns Renfro's duties at the time of the election in his position of foreman: Renfro testified that as a foreman he did not have the authority to hire or fire employees and had never interviewed applicants for employment. As a foreman he wrote work orders received from the truckdrivers and assigned work to the mechanics based on his assessment of their capabilities. He helped the mechanics as required and performed mechanical work himself. He did not have an office but used the service desk. He punched a timeclock as did the mechanics, whereas Director of Maintenance Zoellner did not punch a timeclock and was salaried. He had never recommended an employee for a raise. He had never disciplined or recommended the discipline of an employee with the exception of one incident when he told an employee to go to work or go home. He has never evaluated an employee. He has never laid off or recalled an employee from layoff. He had never recommended that an employee be hired or discharged. He has never been asked by an employee

if the employee could leave work early. On the occasions when overtime has been required, the director of maintenance had requested it. On occasion he has assigned an employee from one job to another. His fringe benefits and vacations were the same as or similar to the mechanics. He received time and a half for overtime work as did the mechanics. He received a 25-cent-per-hour wage increase when he became a foreman.

Under the above circumstances, I find that Foremen Phil Diller and Julius Renfro are working foremen and leadmen with little indicia of supervisory authority and I find that they are neither supervisors nor managerial employees and recommend that the challenges to their ballots be overruled. See *Matthews Drivurself Service, Inc.*, 133 NLRB 1513 (1961); *Addy Mechanical Fabricators and Constructors, Inc.*, 257 NLRB 738 (1981).

The Ballot of Steven Seefeldt

The Petitioner has also challenged the ballot of Steven Seefeldt on the ground that he is a supervisor. Seefeldt was employed as a parts manager at all relevant times herein. Seefeldt works in the parts room and uses a desk utilized by two other employees in the parts department. Seefeldt is responsible for the ordering of parts, determining that there is a sufficient stock of parts, distributing parts in accordance with work orders therefor, and to assure that the parts are signed out when they are distributed. The other two employees in the parts department perform the same type of work. He assigns work to the other two employees who generally check with him prior to the ordering of parts. The pricing of parts to the Respondent's work orders is determined by a standard markup issued by Executive Vice President Burt. He occasionally works overtime and uses his own judgment as whether to do so. He punches a timeclock and is paid time and a half for overtime as are the other employees in the parts room. He has never hired an employee, although on one occasion he was asked by the director of maintenance to talk to an applicant, which he did and recommended that he be hired and the applicant was hired. He has never discharged an employee or transferred an employee. On two occasions he warned a parts employee "to pick it up a little bit, start working a little bit better or the Director of Maintenance was probably going to . . . give him a hard time or whatever." He has never laid off an employee or recalled an employee from layoff. He has never promoted an employee. On one occasion he brought to the attention of the director of maintenance that a parts employee was due for a raise in accordance with a previous determination of management. He assigns work to the other parts employees as a result of his overall knowledge of the parts department's operation. He normally checks with the director of maintenance on high cost items prior to ordering them. He has occasionally been called by the other parts employees when they were sick or needed to leave early and has informed the director of maintenance. He has not evaluated employees nor disciplined employees. He has on one occasion been asked his opinion on a raise for a parts employee. His vacations and fringe benefits do not differ from other employees.

Under the above circumstances, I find that Steven Seefeldt is a lead employee with little or no indicia of supervisory authority and is neither a supervisor nor a managerial employee and I recommend that the challenge to his ballot be overruled. See *Maremont Corporation*, 239 NLRB 240 (1978), and *B-P Custom Building Products, Inc.; and Thomas R. Peck Mfg.*, 251 NLRB 1337 (1980).

Conclusions of Law

1. Respondent T. L. C. Lines, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. District No. 9, International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By interrogating its employees concerning their union activities and the union activities of other employees, the Respondent has violated Section 8(a)(1) of the Act.

4. By threatening its employees with discharge if they supported the Union and by threatening its employees with a downward reclassification of their job positions to apprentices and with a loss of seniority and with the loss of their right to discuss their terms and conditions of employment with the Respondent if they selected the Union as their collective-bargaining representative, the Respondent has violated Section 8(a)(1) of the Act.

5. By the implementation of wage increases designed to discourage the employees' support for the Union, the Respondent has violated Section 8(a)(1) of the Act.

6. By the reevaluation and placement of William Vassalli in a tech 3 position and by the reduction in his pay, the Respondent has violated Section 8 (a)(3) and (1) of the Act.

7. By discharging and thereafter failing and refusing to reinstate employee Glen Stockwell, the Respondent has violated Section 8(a)(3) and (1) of the Act.

8. By the implementation of a change in its cleanup policy in order to discourage the employees' support for the Union, the Respondent has violated Section 8(a)(3) and (1) of the Act.

9. The Respondent did not violate the Act by creating the impression of surveillance of its employee's union activities.

10. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

11. Employees Janet Amsden, James P. (Pat) Akers, Julius Renfro, Phil Diller, and Steven Seefeldt were eligible voters at the time of the election held on May 12, 1981, and their ballots should be counted in determining the outcome of the election. Employee Glen Stockwell was an eligible voter at the time of the election held on May 12, 1981, and his ballot should be counted in determining the outcome of the election.

The Remedy

Having found that the Respondent has committed violations of Section 8 (a)(1) and (3) of the Act, it shall be ordered to cease and desist therefrom and from any other unlawful activity and to take certain affirmative

action to effectuate the policies of the Act including the posting of the appropriate notice. I recommend the reinstatement of Glen Stockwell. I recommend the reinstatement of William Vassalli to his former position of mechanic at his preexisting rate of pay at the time of implementation of his reclassification to mechanic tech 3 position and reduction in pay, said reinstatement and adjustment in pay to cover the period from the date of the Respondent's actions in this regard to the date of Vassalli's voluntary termination of employment in May 1981. I recommend that the Respondent make Glen Stockwell and William Vassalli whole for all loss of earnings and benefits incurred by them as a result of the Respondent's unlawful discrimination as found herein. I recommend that Vassalli's and Stockwell's personnel and payroll records be expunged with respect to the reclassification of Vassalli and the discharge of Stockwell, respectively. All loss of earnings and other benefits incurred by Vassalli and Stockwell as a result of the Respondent's acts, as set out above, shall be computed with interest in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977), See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). The Board does not require that employees suffer the loss of increases in wages and benefits under circumstances such as have occurred in this case in order to effectuate the purposes of the Act. See *Kendall College*, 228 NLRB 1083 (1977), and *Dura-Vent Corporation*, 257 NLRB 430 (1981), and I accordingly do not recomoend that the wage increases implemented in April 1981 be rescinded.

Upon the foregoing findings of fact, conclusions of law, upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[6]

The Respondent T. L. C. Lines, Inc., Fenton, Missouri, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees concerning their union activities and the union activities of other employees.

(b) Threatening its employees with discharge if they support District No. 9, International Association of Machinists and Aerospace Workers, AFL-CIO, or any other labor organization.

(c) Threatening its employees with a downward reclassification of their job positions to apprentices or with a loss of seniority or with a loss of their right to discuss their terms and conditions of employment with the Respondent if they select the Union as their collective-bargaining representative.

(d) Discharging its employees or reducing the job classifications of its employees and/or implementing wage increases and/or reductions or implementing changes in working conditions in order to discourage the employees support for the Union or their engagement in concerted activities.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the purposes and policies of the Act:

(a) Offer to Glen Stockwell immediate and full reinstatement to his former position or, if his position is no longer available, to a substantially equivalent position without prejudice to his seniority or other rights and privileges previously enjoyed.

(b) Reinstate William Vassalli to his former position of mechanic from the period of his unlawful reclassification to a mechanic tech 3 position to his voluntary termination.

(c) Expunge the personnel records of Glen Stockwell with respect to his discharge and of William Vassalli with respect to his reclassification as a tech 3 mechanic.

(d) Make the employees named above in paragraphs (a) and (b) whole for any loss of pay or any other benefits they may have sustained by reason of the discrimination against them in the manner set forth in the section of this Decision entitled "The Remedy."

(e) Preserve and, upon request, make available to the Board or its agents for examination and copying all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessarv to analyze the amount of backpay due under the terms of this recommended Order.

(f) Sign and post copies of the attached notice marked "Appendix"[7] immediately upon receipt thereof, in conspicuous places at its Fenton, Missouri, facility, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director for Region 14, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

IT IS FURTHER RECOMMENDED that the complaint be dismissed with respect to all allegations of violations not specifically found herein.

IT IS FURTHER RECOMMENDED that Case 14-RC-9395 be remanded to the Regional Director for Region 14 with a direction to overrule the challenges to the ballots of Glen Stockwell, Janet Amsden, James P. (Pat) Akers, Phil Diller, Julius Renfro, and Steven Seefeldt and to open and count their ballots and to prepare a revised tally of ballots and issue the appropriate certification.

[6] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[7] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."